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No. 320

IN THE

Supreme Court of the United States

October Term, 1956

MORRIS F. LUFF and RUTH K. LUFF,
Petitioners,

v.

WILLARD J. LUFF and JOHN W. SLACKS,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Morris F. Luff and Ruth K. Luff respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above captioned case on May 17, 1956, affirming the decision of the United States District Court for the District of Columbia granting a motion for partial summary judgment declaring that Willard J. Luff, John W. Slacks and Morris F. Luff are the members of the Willmore Engineering Company, a partnership, for whose relief Private Laws Nos. 495 and 501, 83rd Congress, 2nd Session, were enacted.

OPINION BELOW

The United States District Court for the District of Columbia, where this action originated, on August 29,

1955, entered a judgment, without a trial, granting a motion by Willard J. Luff and John W. Slacks, plaintiffs in said District Court, for partial summary judgment, "declaring that Willard J. Luff, John W. Slacks and Morris F. Luff are the members of the Willmore Engineering Company for whose relief Private Laws No. 495 and 501, 83rd Congress, 2nd Session were enacted." On an appeal prosecuted by petitioners, the United States Court of Appeals for the District of Columbia Circuit, in an opinion dated May 17, 1956, held that the partial summary judgment "was correctly entered", and that it was affirmed. (R. 167-169)

Thereafter, these petitioners filed a timely motion for rehearing in banc, which was denied on June 8, 1956 (R. 175).

These petitioners were named as defendants in the complaint filed in the District Court, and were charged with fraud, deceit, connivance, and conspiracy to defraud, but were denied a trial of such charges by the Court, although they vigorously demanded an opportunity to disprove such false charges by competent evidence. (R. 1-17, App., infra, 1A-19A; R. 47-54, App., infra, 22A-31A)

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the District of Columbia Circuit affirming the judgment below which granted a motion for partial summary judgment without a trial was entered on May 17, 1956. It is not yet officially reported (R. 167-160)

The jurisdiction of this Court is invoked under Title 28, United States Code, Sec. 1254.

QUESTIONS PRESENTED

1. The Constitutional rights of petitioners to a trial of the issues of fact involved were denied by the granting of a partial summary judgment, contrary to the Seventh Amendment to the Constitution.

2. Petitioners were denied due process of law, contrary to the provisions of the Fifth and Fourteenth Amendments to the Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution, in pertinent parts, provides:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law * * *" (Amendment V)

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law" (Amendment VII)

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *" (Amendment XIV)

STATEMENT OF THE CASE

In 1943, Morris F. Luff and Willard J. Luff orally established an informal partnership at will, known as Willmore Engineering Company, with headquarters in Washington, District of Columbia, for the performance of technical engineering, management and supervisory services relating to the production of power driven cargo winches for sea going vessels operated in the prosecution of World War II by and on behalf of the United States

Maritime Commission. The capital necessary to enable the partnership to begin business was supplied by petitioner Morris F. Luff, and has never been repaid to him. (R. 150, 152; App., infra, 49A-51A)

About April 1, 1944, John W. Slacks became associated with the partnership, having contributed $500.00 to the firm, which was repaid to him in full. (R. 47, 150, 151; App., infra, 49A) His active connection with the firm was terminated in 1945 by his voluntary withdrawal (R. 47, 151; App., 49A) His entire relationship to the partnership was terminated about May 15, 1948, after repayment of his contribution to the firm's capital and payment of full compensation for his services (R. 47, 151, 152, 153; App. 49A-52A) Thereafter he took no part in the firm's business and affairs (R. 151, 152, 153; App. 49A-51A) The firm became inactive and was dissolved in 1945. Its only asset was a denied and disputed claim against the United States Maritime Commission (R. 2, 3, 48; App. 24A)

About October 1, 1949, Willard J. Luff obtained employment in Pennsylvania, left Washington, District of Columbia, abandoned the partnership, and ever since has continued in his employment in Pennsylvania (R. 153, 155; App. 52A, 53A)

Following the withdrawal from and abandonment of the partnership by Willard J. Luff in 1949, the partnership became finally dissolved and terminated. Thereupon, Morris F. Luff and his wife, Ruth K. Luff, entered into an informal partnership arrangement, and, at their own expense and without the assistance of Willard J. Luff or John W. Slacks, succeeded, after five years of effort, in securing enactment by Congress of Private Laws Nos. 495 and 501, 83rd Congress, 2nd Session. Private Law No. 495 provides

> "That the Secretary of Commerce and Willmore Engineering Company each shall appoint an arbi-

trator, and they together shall appoint a third arbitrator, these three to serve as a Board of Arbitrators who shall, after having heard the evidence, determine and certify to the Secretary of the Treasury any amount which in their judgment would be required to satisfy any obligations of the United States to the Willmore Engineering Company for services and expenses in connection with its contract and the breach of it, if any, with the United States for production of winches for transport vessels necessary to the prosecution of World War II, pursuant to special emergency authorizations and commitments under war powers, for which it is alleged the United States has failed to provide adequate payment. To the extent not inconsistent with this Act, the provisions of Title 9 of the United States Code shall be applicable to proceedings under this Act. Any cost arising in the arbitration of these claims shall be fixed by the arbitrators and assessed equally between the Government and the claimants." (Approved June 30, 1954) (R. 6; App. 6A, 7A)

The arbitrators appointed, without determining who constituted the partnership known as Willmore Engineering Company, made a purported award of a total of $375,577.37 "which shall be in full settlement of all claims of the said Willmore Engineering Company against the United States" (R. 34-36) The amount of the purported award has been paid into the Registry of the United States District Court for the District of Columbia.

The complaint and answer filed in the District Court established issues of fact to be resolved before a judgment as to who constituted the partnership at the time of enactment of the relief legislation properly might be entered, as follows:

(1) Did John W. Slacks finally and completely withdraw from the partnership in 1948?

(2) Did Willard J. Luff abandon and finally withdraw from the partnership on or about October 1, 1949?

(3) Did Morris F. Luff and Ruth K. Luff form a new partnership and continue the use of the name of Willmore Engineering Company beginning about October 1, 1949?

(4) Did Morris F. Luff and Ruth K. Luff, at their expense and without assistance from Willard J. Luff or John W. Slacks bring about enactment of the private relief legislation involved in this proceeding?

(5) Who owned the claim of Willmore Engineering Company after final dissolution of the original partnership?

(6) Who constituted the Willmore Engineering Company for whom Congress enacted the private relief legislation?

Proper resolution of these issues required the production of evidence. They are not conclusions of law. The trial court granted judgment without a trial and without evidence.

REASONS FOR GRANTING THE WRIT

Denial of Trial Improper

The Constitutional guarantees of due process of law extend to judicial proceedings (12 C. J., 1196, Sec. 961, and cases cited, including numerous decisions of this Honorable Court)

In Truax v. Corrigan, 257 U. S. 312, 332, 42 S. Ct. 124, 66 L. Ed., 254, this Court, among other things, said:

> "* * * The due process clause, brought down from Magna Charta, was found in the early state constitions, and later in the Fifth Amendment to the Federal Constitution as a limitation upon the executive, legislative and judicial powers of the Federal Government * * *
>
> "The due process clause requires that every man shall have the protection of his day in court, and the

benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon inquiry, and *renders judgment only after trial,* so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. * * *" (Emphasis added)

"There is no question but that citizens require protection against the judiciary as well as against the legislature * * *. Every man is entitled to his day in court, and equal opportunity must be given him to prosecute or defend * * *" (Manual to the Constitution of the United States by J. Leonard Peirce and Harry Clayton Cook, pp. 106, 107)

Those fundamental principles apply to civil as well as criminal judicial proceedings. Denial of the right to produce evidence on issues of fact is a denial of due process. That is what occurred in this case.

Petitioners stood ready to prove by competent evidence that the original partnership known as Willmore Engineering Company became completely dissolved and ceased to exist in 1949; that Willard J. Luff and John W. Slacks completely abandoned and deserted the partnership; that petitioners formed a new partnership, and, after years of hard work, made a thing of value out of a claim that was worthless and so considered by said Willard J. Luff and John W. Slacks when the partnership was dissolved, and that the Willmore Engineering Company for whose relief the private legislation was enacted were petitioners and not the three partners mentioned in the court's judgment. This is borne out forcibly and clearly by the affidavit of Lawrence B. Slater, duly filed in the record. (R. 96-98; App. 39A-42A). By the partial summary judgment, the courts below have denied these petitioners their Constitutional right to have a "judgment only after trial."

That the summary judgment procedure is overworked and abused by the courts in their efforts to clear congested dockets is generally known among lawyers. This is true of the pre-trial procedures in the Federal Courts. Few lawyers, however, have seen fit to voice their dissatisfaction and concern. One of those who has spoken is Truman Rucker, who, writing in the Journal of the American Judicature Society for October, 1954, on the subject of pre-trials, which, likewise are used to dispose of cases without formal trials, voiced opinions applicable alike to the summary judgment procedure when he said:

> "The very bulwark of the American system of life is based upon trials by juries and judges, but if the system that we have is not going to seek the truth in an expeditious manner, then litigants of all types * * * will force the legislators of this country to furnish some type of bureau to adjudicate their differences."

"One of the most cherished features of common law procedure, as colonists understood it, was the right of trial by jury." (Peirce and Cook, supra, p. 133)

This Court, in Simon v. Craft, 182 U. S. 427, 436, 21 S. Ct. 836, 45 L. Ed. 1165, said:

> "The essential elements of due process of law are notice and opportunity to defend. * * *"

An opportunity to defend is not afforded where the court renders judgment on an issue of fact without giving a litigant the right to produce evidence on such issue. In this case, by the partial summary judgment, petitioners were denied the opportunity and right to produce evidence on material questions of fact—they were denied the right to defend allegations that they were not the owners of the claim against the Government at the time the private relief legislation was enacted—they were denied the right to defend serious accusations made against

them touching their honesty and integrity—they were denied the right to produce evidence of the abandonment of all interest in the partnership by Willard J. Luff and John W. Slacks—they were denied the right to produce evidence that after abandonment and surrender of all right to the claim against the Government by Willard J. Luff and John W. Slacks petitioners took that worthless claim and by their own efforts and at their own expense made something of value of it. Petitioners have not had their day in court and the granting of the partial summary judgment without a trial violates their Constitutional rights.

Effect of Partial Summary Judgment

It is axiomatic that a partnership as between the partners can be created only by agreement. The complaint admitted that the partnership established in 1943 became dissolved about August of 1945 (R. 3; App. 3A)

By the summary judgment, the court below, without a trial or the production of evidence, created a partnership consisting of the former partners some nine years after dissolution, contrary to the wishes of at least one former partner and without any new agreement that he or the other two would be partners. Petitioner Morris F. Luff, therefore, has been forced against his will to be a partner with the two plaintiffs below who have charged him with fraud and conspiracy, and who refuse to confront him in open court so that he may refute and disprove those charges. By judicial selection, Morris F. Luff is a partner with two persons in whom he lacks all confidence and trust and with whom he has no desire to be associated in any manner whatever. How, then, can that be due process of law?

Judgment Below is Arbitrary and Capricious

While the Constitution does not guarantee that a trial shall be entirely free from error, a gross and obvious

error "coming close to the boundary of arbitrary action" renders a judicial proceeding void as violative of the Constitutional right of due process.

Roberts v. New York, 295 U.S. 264, 79 L. Ed. 1429, 1435, 55 S. Ct. 689.

Where the judgment, as in this case, amounts to an arbitrary and capricious exercise of judicial power without a trial and "is in clear conflict with these fundamental 'principles' which have been established in our system of jurisprudence for the protection and enforcement of private rights", the litigant has been denied due process, contrary to the Constitutional guaranty.

Am. Ry. Exp. Co. v. Kentucky, 273 U.S. 269, 47 S. Ct. 353, 71 L. Ed. 639, 641, citing Pennoyer v. Neff, 95 U.S. 714, 733, 24 L. Ed. 565, 572; Booth v. Illinois, 184 U.S. 425, 429, 46 L. Ed. 623, 626, 22 S. Ct. 425, and Truax v. Corrigan, 257 U.S. 312, 329, 66 L. Ed. 254, 261, 27 ALR 375, 42 S. Ct. 124.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that this petition for certiorari should be granted, and the case remanded to the trial court with directions to grant petitioners the right of trial on the issues of fact set forth above herein.

Respectfully submitted,

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Attorney for Petitioners.

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APPENDIX

[Filed February 7, 1955]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLARD J. LUFF, Davidsonville Road,
Gambrills, Maryland, and
JOHN W. SLACKS, 4356 East Elmwood Street,
Tucson, Arizona,

Plaintiffs,

v.

MORRIS F. LUFF and RUTH K. LUFF,
2153 California Street, N.W.
Washington, D. C., and

GEORGE M. HUMPHREY, Secretary of the Treasury
of the United States, Treasury Department,
Washington, D. C.

Defendants.

Civil Action No. 557-55

COMPLAINT FOR INJUNCTION PENDENTE LITE, DECLARATORY JUDGMENT, AND GENERAL RELIEF

1. The court has jurisdiction of this action by virtue of Title 11, Section 306, of the District of Columbia Code (1951) and the Declaratory Judgment Act of 1948, 28 U. S. Code, Sections 2201 and 2202. The amount in controversy exceeds Three Thousand Dollars, exclusive of interest and costs.

2. The plaintiffs are citizens of the United States and their residences are as set forth in the caption hereof. They bring this action in their individual rights and as co-partners under the name of Willmore Engineering Company, as hereinafter set forth.

3. The defendants, Morris F. Luff and Ruth K. Luff, his wife, are sued herein in their own rights as hereinafter set forth. The defendant, George M. Humphrey, is sued in his official capacity as Secretary of the Treasury of the United States.

4. The plaintiffs, Willard J. Luff and John W. Slacks, and the defendant, Morris F. Luff, are the individual members of the partnership Willmore Engineering Company, said partnership having been formed originally in 1943 between the said Willard J. Luff and the said Morris F. Luff. In 1944, the said John W. Slacks became a partner in the firm.

5. The partnership Willmore Engineering Company, during the period of its active existence, was a professional partnership formed for the performance of technical, engineering, managerial, supervisory, accounting, and cost control services in connection with contracts, subcontracts, and special emergency authorizations and commitments made by and with the United States Maritime Commission, under war powers, for the production of winches for transport vessels of the United States necessary to the prosecution of World War II. The production activities were conducted by Willard J. Luff and John W. Slacks in plants located at Holyoke, Massachusetts, and elsewhere. Willard J. Luff, a highly trained and experienced professional engineer performed the technical, engineering and supervisory services in connection with said winch production project; John W. Slacks, in co-operation with Willard J. Luff, contributed his knowledge and experience and services in industrial

engineering work, and as a certified public accountant, and designed, installed and supervised the system of material and production controls utilized on the project, and assisted the said Willard J. Luff in the supervisory and managerial duties of the firm; and Morris F. Luff performed non-technical services in connection with the operation of the head-quarters office of the firm in Washington, D. C.

6. The duration of said partnership was confined and limited to the performance of said winch production project for the Maritime Commission, and upon the completion of that work, in or about *August, 1945*, it ceased to be active as a going concern. It had at no time engaged in any other business than that for which it had been formed, as aforesaid, and after August, 1945, no further business was planned or undertaken by said partnership. Upon the completion of said winch production project it became and was dissolved except for the limited purpose of liquidating its affairs and winding up its business. Its only asset was a claim against the United States for substantial sums of money unpaid, due and owing by the Maritime Commission to said partnership for its work for said Maritime Commission, as aforesaid.

7. Commencing in or about August, 1945, all three of said partners, namely, the plaintiffs, Willard J. Luff and John W. Slacks, and the defendant, Morris F. Luff, as liquidating partners of the said Willmore Engineering Company, expended much time and effort endeavoring to secure the payment of the partnership claim by prosecuting said claim before the Maritime Commission under various war-time Acts of Congress and administrative procedures set up in the Commission for the settlement and payment of war contracts, but without success. Much of the burden of presentation of said claim fell upon the said Willard J. Luff and the said John W. Slacks, be-

cause of their intimate knowledge of the technical and accounting details of the winch production project, and they were assisted throughout by their said partner, the defendant, Morris F. Luff.

8. In September, 1949, having failed to prevail in the assertion of said partnership claims under administrative procedures, said three partners employed and retained R. Sidney Johnson, Esquire, a member of the bar of this Honorable Court, as their attorney to represent them individually and as co-partners of said Willmore Engineering Company in the prosecution of the said claim against the United States, and said partners undertook, promised and agreed to pay to said attorney, Johnson, for his services, a fee which was to be contingent and payable out of any amounts or funds recovered on said claim. The said attorney R. Sidney Johnson, so employed and retained by said partnership, has continued to act for said partnership in all matters concerned with the prosecution of said claim, and still is the attorney for the firm, for the purpose of collecting or assisting said partnership in the collection of moneys now determined and awarded against the Government in favor of the said Willmore Engineering Company in payment of said claim, as hereinafter more particularly set forth.

9. On December 5, 1949, said three partners, acting by and through their said attorney, filed suit in the United States Court of Claims, upon said claim, being Case No. 49,392 in said Court, entitled "Willard J. Luff, Morris F. Luff, and John W. Slacks, Plaintiffs, v. United States, Defendant", and said three partners, and particularly the said Willard J. Luff and Morris F. Luff, acting for the firm and in close co-operation with said partnership attorney, devoted much time and made diligent efforts in the joint prosecution of said suit continuously until its termination on November 6, 1951, when

it was dismissed by said Court of Claims on technical grounds.

10. Said *three partners,* further acting for the liquidation of the affairs and business of said Willmore Engineering Company, and in the prosecution of its said claims against the United States, were required, and did, in the years 1951, 1952, and 1953, to resist and defend in this Honorable Court an action for damages for civil fraud brought by the United States, wherein, in substance it was alleged that the said claims of said partnership were fraudulent, this being Civil Action No. 1702-51, entitled "United States of America, Plaintiff, v. Willard J. Luff, Morris F. Luff, and John W. Slacks, individually and as co-partners doing business as Willmore Engineering Company, Defendants". The said Willard J. Luff and Morris F. Luff, individually, and on behalf of their co-partner, John W. Slacks, worked diligently together with the said partnership attorney in the defense of said action from the time it was instituted in April, 1951, until, after several days of trial in open court, ending on March 10, 1953, Judge Benn Moore, presiding in this Court, directed a verdict in favor of the said partner-defendants, upon motion of said attorney, and thereafter entered judgment upon said verdict. The plaintiffs pray that the Court take judicial notice of the file and proceedings in said Civil Action No. 1702-51, and that the same be read and considered as a part of this Complaint.

11. In the years from 1949 through the early part of 1954 the said Willard J. Luff and Morris F. Luff, acting for all three said partners of the said Willmore Engineering Company, in their continuing effort to collect said claim against the Government and to liquidate the affairs and business of said partnership, secured the introduction in Congress of several bills for the relief of the said partnership and the payment of its said claims.

One of said bills, H. R. 6053, introduced in the 82nd Congress, was brought to lengthy hearings before the Subcommittee on Claims of the House of Representatives in the months of May and June, 1952. The plaintiff, Willard J. Luff, and the defendant, Morris F. Luff, represented and assisted by said partnership attorney, prepared and presented evidence and testimony in support of said claim before said Subcommittee, said partners and said attorney working together in unison at all times for the interest of all three said partners of the said Willmore Engineering Company.

12. The aforesaid hearings on H. R. 6053 resulted in the introduction in Congress of a bill known as H. R. 7258 in the 83rd Congress, 2nd Session, for the relief of the said Willmore Engineering Company, said bill having been sponsored on behalf of the said partnership Willmore Engineering Company by Representative Frank Small, Jr., of Maryland, at the special instance and request of the plaintiff Willard J. Luff, who is a resident of Maryland and was a constituent of said Congressman. And said Congressman, acting on behalf of the plaintiff, Willard J. Luff, and assisted from time to time by the said Willard J. Luff, and the defendant, Morris F. Luff, was enacted into law, and is now known as Private Laws Nos. 495 and 501, 83rd Congress, 2nd Session. Said Private Laws are quoted as follows, to wit:

Private Law 495—83rd Congress
Chapter 443—2nd Session
H. R. 7258

For the relief of Willmore Engineering Company

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce and Willmore Engineering Company each shall appoint an arbitrator, and they together shall appoint a third arbitrator, these three to serve as a Board

of Arbitrators who shall, after having heard the evidence, determine and certify to the Secretary of the Treasury any amount which in their judgment would be required to satisfy any obligations of the United States to the Willmore Engineering Company for services and expenses in connection with its contract and the breach of it, if any, with the United States for production of winches for transport vessels necessary to the prosecution of World War II, pursuant to special emergency authorizations and commitments under war powers, for which it is alleged the United States has failed to provide adequate payment. To the extent not inconsistent with this Act, the provisions of Title 9 of the United States Code shall be applicable to proceedings under this Act. Any cost arising in the arbitration of these claims shall be fixed by the arbitrators and assessed equally between the Government and the claimants.
Approved June 30, 1954.

Private Law 501—83rd Congress
Chapter 464—2d Session
H. J. Res. 553

JOINT RESOLUTION

To amend the Act of June 30, 1954 (Private Law 495, Eighty-third Congress).

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of June 30, 1954 (Private Law 495, Eighty-third Congress), is amended by adding at the end thereof the following section:

"Sec. 2. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Willmore Engineering Company a sum equal to the amount certified to him under the first section of this Act. The payment of such sum shall be in full settlement of all claims of the said Willmore Engineering Company against the United States for compensation for such services and expenses: Provided, That no part of the amount appropriated in this Act in

excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding $1,000.00". Approved July 6, 1954.

13. Prior to the passage of said Private Laws, the Committee on the Judiciary of the United States Senate made its Report No. 1458, and included therein a prior report known as House Report No. 1330, in which the facts found by Congress pertaining to said claim of said partnership, Willmore Engineering Company, are stated. A copy of said Senate Report No. 1458 is hereto attached, and prayed to be considered as a part of this Complaint.

14. At all times subsequent to the aforesaid dissolution of said partnership, Willmore Engineering Company, and During the efforts of said three partners to liquidate said partnership affairs and to enforce payment and collection of said partnership claims against the United States, as hereinbefore set forth, the plaintiffs, Willard J. Luff and John W. Slacks, duly performed their duties as liquidating partners, together with their said co-partner, the defendant, Morris F. Luff, and at all times the said Willard J. Luff and John W. Slacks acted in honesty and sincerety for the best interest of all three of said partners, relying implicitly upon the supposed hon*esty*, integrity, and bona fides of their said co-partner, Morris F. Luff; and on June 19, 1954, the said plaintiffs, in good faith, and while still continuing to believe in and rely upon the bona fides and good faith and honesty of the said Morris F. Luff, and without notice or knowledge of the fraudulent intensions, designs and purposes of the said Morris F. Luff, as hereinafter set forth, entered into the following agreement in writing:

"AGREEMENT

Washington, D. C.
June 19, 1954

WE, THE UNDERSIGNED, for the purpose of finally resolving, settling, and liquidating all our rights, interests and obligations in the partnership known as WILLMORE ENGINEERING COMPANY of Washington, D. C., hereby mutually agree to arbitration, and we hereby irrevocably appoint, delegate, authorize and empower EUGENE D. HEGARTY of Annandale, Virginia, as our arbitrator to hear, investigate, and arbitrate a final determination for all and each of us in our names and places on all matters concerning our former and present relationships pertaining to WILLMORE ENGINEERING COMPANY, and as the arbitrator for WILLMORE ENGINEERING COMPANY on the Board of Arbitrators to be created under a pending bill in Congress, H. R. 7258, in the event it is enacted and becomes law.

/s/ Morris F. Luff
Willard J. Luff
John W. Slacks

Appointment as Arbitrator under terms set forth in the agreement stated above is hereby accepted:

/s/ Eugene D. Hegarty

WITNESS:

/s/ Lawrence B. Slater
Witness as to John W. Slacks

/s/ Charles J. Casper"

15. On or about July 31, 1954, the said Eugene D. Hegarty purported to hold a meeting, at which were present the said Hegarty, the defendants, Morris F. Luff and Ruth K. Luff, his wife, one Craigin Donaldson, and the plaintiff, Willard J. Luff. The plaintiff, John W.

Slacks, was given no notice of said meeting, and was not present. At said meeting, the defendants Morris F. Luff and Ruth K. Luff, his wife, falsely, fraudulently and deceitfully declared and represented to the said Eugene D. Hegarty that they, the said two defendants, and none other, were the co-partners of Willmore Engineering Company; that the plaintiffs, Willard J. Luff and John W. Slacks had "abandoned" said partnership and were no longer partners therein; that the aforesaid agreement of June 19, 1954, had been signed by Ruth K. Luff, as a partner and party in interest in the Willmore Engineering Company; and that the said two defendants, Morris F. Luff and Ruth K. Luff, his wife, were the sole owners of the claim of said partnership against the United States, and entitled to receive the benefits of any award made pursuant to said Private Laws, to the exclusion of the plaintiffs, Willard J. Luff and John W. Slacks, as partners.

16. Promptly upon learning of the false, fraudulent and deceitful intent and purposes of the said defendants, Morris F. Luff and Ruth K. Luff, his wife, the plaintiffs did, to wit, on August 4, 1954, repudiate and rescind said agreement of June 19, 1954, insofar as it purported to appoint the said Eugene D. Hegarty as arbitrator between the partners of the said Willmore Engineering Company, and revoked all power and authority therein given the said Eugene D. Hegarty to act as arbitrator between them and the said Morris F. Luff, and thereafter, the plaintiffs refused to participate in or to be bound by any further attempts of the said Morris F. Luff and the said Eugene D. Hegarty to conduct such arbitration.

17. The plaintiffs aver that, notwithstanding the confidence and trust theretofore reposed in him as their partner in said Willmore Engineering Company, and in violation of his fiduciary obligations and duties as one

of the liquidating partners of said firm, the said Morris F. Luff alienated and estranged himself from the plaintiffs and the said partnership attorney, R. Sidney Johnson, Esquire, and withdrew from further association with the plaintiffs, and abandoned and repudiated the claims of said partnership Willmore Engineering Company against the United States, and entered upon a systematic course of deception and misrepresentation, practiced upon the plaintiffs, and upon the aforesaid partnership attorney, designed and contrived by him and his said wife, Ruth K. Luff, for the purpose of defrauding the plaintiffs of their rightful shares and interests as partners in the said Willmore Engineering Company, and pursuant thereto the said Morris F. Luff, in collusion with his said wife, the defendant, Ruth, K. Luff, and with others, wrongfully and fraudulently did the following things, among others, to wit:

(a) Falsely represented and declared to the said Eugene D. Hegarty, as purported arbitrator aforesaid, and to Delos G. Smith and Gerald Ryan, two of the three members of the Board of Arbitrators created under said Private Laws, that the plaintiffs, Willard J. Luff and John W. Slacks, had abandoned said partnership, Willmore Engineering Company, and that he, the said Morris F. Luff, or he and his said wife, Ruth K. Luff, were the successors to said Willmore Engineering Company, and to the shares and interests of the plaintiffs as partners therein;

(b) Surreptitiously and corruptly conniving with his said wife, Ruth K. Luff, caused the said Ruth K. Luff to sign and superimpose her signature to certain duplicate-originals of the aforesaid agreement of June 19, 1954, and for the purpose and with the intent to deceive and wrongfully influence said Eugene D. Hegarty, and said Delos G. Smith and Gerald Ryan, Arbitrators as aforesaid, did falsely and deceitfully pretend and repre-

sent to said Arbitrators that his said wife, Ruth K. Luff, was a party to said agreement of June 19, 1954, and that her signature was so affixed to said agreement because she was a partner and party in interest in the claim of said Willmore Engineering Company which was the subject of arbitration under the aforesaid Private Laws;

(c) Falsely and deceitfully pretended, represented and declared to said Board of Arbitrators, and to the members thereof, that certain so-called and supposed "Findings of Arbitrator" signed by the said Eugene D. Hegarty as supposed arbitrator, and dated August 18, 1954, (after his power and authority as such had been revoked by the plaintiffs as aforesaid), were valid and binding up on the plaintiffs, and upon the Board of Arbitrators, and that by reason thereof, and of the supposed agreement of June 19, 1954, referred to in subparagraph (b) above, he, Morris F. Luff, or he and his said wife, Ruth K. Luff, were the only persons entitled to present the claims of said Willmore Engineering Company and to receive the benefits of any award under said Private Laws;

(d) Falsely and fraudulently conniving and conspiring with his said wife, did declare and represent to said Board of Arbitrators that he, or he and his said wife, as partners of the Willmore Engineering Company mentioned and referred to in said Private Laws, were entitled to claim and receive from the United States, by reason of said Private Laws, a large amount of money, to wit, a sum in excess of two million seven hundred thousand dollars;

(e) On December 3, 1954 filed in this Honorable Court, in Civil Action No. 5139-54, a verified complaint against Gerald Ryan and Delos G. Smith, two of the three members of said Board of Arbitrators, in which he and his said wife sought to have the aforesaid false

representations established judicially, and in said action deliberately and unlawfully failed and omitted to join the plaintiffs, Willard J. Luff and John W. Slacks, his said partners, as indispensible parties thereto;

(f) Falsely pretending and representing himself and his said wife to be the only lawful partners of the said Willmore Engineering Company has undertaken and attempted, and still undertakes in this Honorable Court to challenge the qualifications of the members of said Board of Arbitrators, the conduct of the arbitration proceedings, and the validity of the award of said Arbitrators, when the said Morris F. Luff knows that his said actions are contrary to the desires and judgment of the plaintiffs, his co-partners as aforesaid, and when the said Morris F. Luff knows, as a matter of fact, that except for his rightful share and interest in said award as co-partner with the plaintiffs he has not, nor has his said wife, Ruth K. Luff, any independent or individual right, title or interest in said arbitration award, or the proceeds or payment thereof;

(g) Falsely represented and continues to represent to the Secretary of the Treasury of the United States, and to his subordinate officers, that he, Morris F. Luff, and his wife, Ruth K. Luff, and none other, has the right to receive and receipt for the payment of said award of arbitrators and give acquittance to the Government of all claims of the said Willmore Engineering Company, the said Morris F. Luff and Ruth K. Luff well knowing that such representations are sham and false and that his said partners, Willard J. Luff and John W. Slacks each have also substantial, vested property rights and interests in said award and the funds constituting said award; and

(h) Without the knowledge or consent of the plaintiffs, has used, and continues to use the name and style "Willmore Engineering Company" as the supposed and

pretended partnership name, title and style of himself and his said wife, well knowing that neither he nor his said wife is an engineer, and that he and his said wife are wholly unqualified to engage in the practice of engineering in the District of Columbia, and that neither of them is eligible to receive a certificate of registration or license as such engineer.

18. The plaintiffs, Willard J. Luff and John W. Slacks aver that they have never agreed that anyone else, besides the defendant, Morris F. Luff, should be a partner with them or either of them in the said Willmore Engineering Company, and that they have not, nor has either of them, at any time released, relinquished, assigned, transferred, or abandoned their interests or shares as partners of said Willmore Engineering Company, or in the claims of said partnership against the United States, or in said award of abritrators, in any manner whatsoever to Morris F. Luff, or Ruth K. Luff, or to any other person or persons.

19. In accordance with the aforesaid Private Laws, a Board of Arbitrators was duly appointed and constituted, consisting of the aforesaid Delos G. Smith, the appointee of the Secretary of Commerce; Eugene D. Hegarty, the appointee of the said Willmore Engineering Company; and Gerald Ryan, the arbitrator selected by the two thus appointed. As will appear from the Award and the certification thereof by said Board of Arbitrators hereinafter more particularly mentioned and referred to, the said Eugene D. Hegarty was appointed by virtue of the aforesaid agreement of June 19, 1954, executed by Willard J. Luff, John W. Slacks, and Morris F. Luff, the three partners of Willmore Engineering Company, and by no other person.

20. On October 2, 1954, at the request of said Board of Arbitrators, the plaintiffs, Willard J. Luff and John W. Slacks, assisted therein by the aforesaid partnership

attorney, prepared a written statement of the claim of the said partnership, Willmore Engineering Company, on behalf of themselves and their said partner, Morris F. Luff, and endeavored by every reasonable means to get the said Morris F. Luff to join in the execution and presentation of said claim to the Board of Arbitrators, but the said Morris F. Luff, steadfastly pursuing his aforesaid false and fraudulent claims and practices, refused to co-operate with them in any manner with respect to said claim, and refused to receive from them any communication, including regular and registered mail sent him by the said Willard J. Luff, and said partnership attorney.

21. The plaintiffs, continuing the performance of their obligations and duties as liquidating partners of the said Willmore Engineering Company, submitted on behalf of said partnership, including the said Morris F. Luff, the legitimate and proper claim of said partnership against the United States for arbitration under said Private Laws; and said plaintiffs, with said partnership attorney, appeared at the formal hearings of said Board of Arbitrators and duly proved and established before said Board, by evidence, both oral and documentary, each and every item of said claim.

22. On January 13, 1955, said Board of Arbitrators made, and certified to the Secretary of the Treasury of the United States, in accordance with the aforesaid Private Laws, an award in favor of the said partnership Willmore Engineering Company, comprised as aforesaid of Willard J. Luff, Morris F. Luff and John W. Slacks, the co-partners thereof, in the amount of $375,577.37. A copy of said award of said Board of Arbitrators is hereto annexed and prayed to be considered and taken as a part of this Complaint.

23. The plaintiffs have not made, and do not now make any objection or challenge to said award.

24. The United States was represented at said arbitration hearings by counsel of the Department of Commerce, and of the United States Maritime Administration, throughout said hearings, and no objection or challenge to said award has been made by the said United States, or its said counsel.

25. The plaintiffs aver that the said partnership Willmore Engineering Company is justly indebted to said partnership attorney, R. Sidney Johnson, Esquire, on account of his aforesaid employment and retainer, in the sum of $37,557.73.

26. The plaintiffs aver that said Willmore Engineering Company is indebted for unpaid auditing and accounting services rendered by the firm of McGinley and McGinley, in the amount of $3,360.00.

27. The said Willmore Engineering Company is indebted to and obligated to pay to former associates and employees of the partnership who were engaged in the work of performing and completing the aforesaid winch production project for the said United States Maritime Commission the amounts due them for their services, as follows, to wit:

To the heirs of H. M. Pulsifer, Deceased	$12,600.00
To the heirs of D. L. Arnold, Deceased	3,160.00
To A. E. Flood	6,125.00
To Walter F. Rudy	2,600.00
To Norma Mackos	1,300.00

with interest on each of said amounts at the rate of four per centum per annum from September 30, 1945.

28. There is due and payable by said partnership, Willmore Engineering Company, out of said award, to the said Willard J. Luff, for personal advances to the firm which have not been reimbursed, the sum of $1,452.42

29. The said partnership is indebted to the Merchants National Bank, on a judgment of the Circuit Court for Ann Arundel County, Maryland, on a promissory note in the principal amount of $2,850.00, with interest thereon at the rate of six per centum per annum from March 27, 1950.

30. The said partnership is indebted, under the provisions of said Private Laws, to pay to the said Board of Arbitrators one-half of the amount fixed by said Arbitrators in their award as arbitration costs, to wit, the sum of $14,750.00.

31. After the payment, out of said award, of the amounts due and owing by said Willmore Engineering Company as set forth in paragraphs 25 through 30 above, the balance remaining in said award funds is distributable between the aforesaid three partners of Willmore Engineering Company, namely, the plaintiffs, Willard J. Luff and John W. Slacks, and the defendant, Morris F. Luff, according to their respective shares and interests as such co-partners, as follows, to wit:

To Willard J. Luff	45.6%
To John W. Slacks	21.6%
To Morris F. Luff	32.8%

32. The plaintiffs aver that it is the intent and purpose of the defendants, Morris F. Luff, and his said wife, Ruth K. Luff, if permitted to pursue their aforesaid fraudulent designs and purposes, to wrongfully receive and take possession of any check, draft, or other evidence of indebtedness issued to the said Willmore Engineering Company by the Secretary of the Treasury for the payment of said award, or by their aforesaid corrupt and deceitful practice to prevent the plaintiffs, as partners of said Willmore Engineering Company, from collecting and receiving payment of said award for the benefit of all three said partners; and if the said Morris F. Luff and Ruth K. Luff shall come into possession of

the funds of said award it is their intent and purpose to appropriate the said funds to their own use and benefit, and to deny to the aforesaid creditors of said Willmore Engineering Company, and to the plaintiffs, Willard J. Luff and John W. Slacks, the moneys justly due and owing to them as aforesaid.

33. The said defendants, Morris F. Luff and Ruth K. Luff, are not possessed of any assets, real or personal, out of which the plaintiffs could hope to recover their respective shares and interests in said award, or said creditors could be paid, and the plaintiffs are informed and believe that the said Morris F. Luff has been unemployed for a number of years, is hopelessly indebted to others, and is completely irresponsible financially, and the plaintiffs therefore aver that if said defendants should succeed in securing to themselves the proceeds of said award the plaintiffs would suffer the complete loss of their shares and interests therein to their irreparable injury and damage.

WHEREFORE, the premises considered, the plaintiffs pray:

1. That the process of this Court may issue to the defendants, and each of them, requiring them to make answer to the exigencies of this Complaint.

2. That the defendants, Morris F. Luff and Ruth K. Luff, be restrained and enjoined from any further efforts to secure for themselves any payment of said award of arbitrators, pendente lite.

3. That the defendant, George M. Humphrey, Secretary of the Treasury, be restrained and enjoined from making payment of said award to the said defendants, Morris F. Luff and Ruth K. Luff, individually, or as "Willmore Engineering Company", or to any person or persons on their behalf, pending final hearing of this cause.

4. That this Honorable Court pass an order requiring the said George M. Humphrey, Secretary of the Treasury, to pay into the Registry of this Court the said sum of $375,577.37, constituting the amount of said award of said Board of Arbitrators, subject to the further order of the Court.

5. That, upon the final hearing of this cause, the Court, by its judgment herein, declare that the said Willmore Engineering Company mentioned and referred to in said Private Laws, and in the award of said Board of Arbitrators, is a partnership comprised of Willard J. Luff, John W. Slacks, and Morris F. Luff, and none other.

6. That the Court, upon final hearing of this cause, may direct the distribution and payment of the proceeds of said award in accordance with paragraphs numbered 25 through 31 of this Complaint.

7. And for such other and further relief as to the Court may seem just and proper, and as the nature of the case may require.

/s/ .....
WILLARD J. LUFF

/s/ .....
JOHN W. SLACKS
Plaintiffs.

/s/ .....
R. SIDNEY JOHNSON
Union Trust Building,
Washington 5, D. C.

/s/ .....
J. RICHARD EARLE
Washington Loan & Trust Bldg.,
Washington 4, D. C.
Attorneys for Plaintiffs.

DISTRICT OF COLUMBIA, ss:

Willard J. Luff and John W. Slacks, being first duly sworn according to law, on their oaths depose and say that they have read the foregoing and annexed Complaint, by them subscribed, and know the contents thereof; that the statements therein made of their personal knowledge are true, and those made upon information and belief they believe to be true.

/s/ .....
WILLARD J. LUFF

/s/ .....
JOHN W. SLACKS

Subscribed and sworn to before me this 7th day of February, 1955.

/s/ .....
REGINA C. MCGIVERU

Notary Public in and for
the District of Columbia

(SEAL) My commission expires February 14, 1959.

February 2, 1954.

Mr. Edward B. Bowers,
Legislative Analyst, Bureau of the Budget,
Executive Office of the President,
Washington, D. C.

Dear Mr. Bowers: Responding to your telephone call of yesterday afternoon, I am pleased to have Mr. Lawrence B. Slater, my administrative assistant, confer with you and/or Mr. Hyde in your office today, as arranged, about my bill, H. R. 7258, for the relief of the Willmore Engineering Co.

The following information, pertinent to this case, will be of interest to you:

H. R. 7258 was drafted jointly by the Office of General Counsel, Department of Commerce, and *Mr. Slater* of my staff, pursuant to an understanding authorized by the Secretary of Commerce, with a view to arbitration.

I have suggested an alternative through which arbitration may be accomplished under existing law, specifically Public Law 395, 78th Congress, section 13(e).

"(e) The contracting agency responsible for settling any claim and the war contractor asserting the claim, by agreement, may submit all or any part of the termination claim to arbitration, without regard to the amount in dispute. Such arbitration proceedings shall be govered by the provisions of the United States Arbitration Act to the same extent as if authorized by an effective agreement in writing between the Government and the war contractor. Any such arbitration award shall be final and conclusive upon the United States to the extent as a settlement under subsection (c) of section 6, but shall not be subject to approval by any settlement review board."

This law requires only a simple agreement appointing an arbitrator, or a joint request to the chief judge of the district court to appoint an arbitrator and to embody in his appointment the language H. R. 7258.

I am prepared to press for passage of my bill, H. R. 7258. However, a recommendation from the Executive Office of the President to proceed under Public Law 395 would obviate the necessity of cumbersome legislative procedure, and would have the net effect of practical direct action in the interest of final adjudication of this claim.

Questions of law and fact bearing on the legitimacy of this claim by Willmore Engineering Co. were decided by the United States District Court for the District of Columbia on March 10, 1953, in Civil Action No. 1702-51, in favor of the Willmore Engineering Co.

Your interest in expediting proper consideration of this matter is appreciated very much.

Very sincerely yours,

FRANK SMALL, JR.,
Member of Congress

[Filed Feb. 28, 1955]

JOINT AND SEVERAL ANSWER OF DEFENDANTS MORRIS F. LUFF AND RUTH K. LUFF

The defendants, Morris F. Luff and Ruth K. Luff, submit the following as their joint and several answer to the complaint of the plaintiffs herein:

First Defense

The complaint fails to state a claim against these defendants on which relief can be granted.

Second Defense

The alleged cause of action sued upon in this complaint did not accrue within three years next preceding the filing of this action.

Third Defense

The plaintiffs' supposed cause of action is barred by laches.

Fourth Defense

1. The allegations of paragraph 1 of the complaint are admitted.

2. The citizenship and residence of plaintiffs are admitted. The allegations of paragraph 2 of the complaint that plaintiffs bring the within action as co-partners under the name of Willmore Engineering Company are denied, because they have no right to sue as partners.

3. The allegations of paragraph 3 of the complaint are admitted.

4. The allegation that plaintiffs Willard J. Luff, John W. Slacks and defendant Morris F. Luff are the individual members of the partnership Willmore Engineering Company is denied. These defendants admit the formation of a partnership in 1943, known as Willmore Engineering Company, and consisting in the beginning of plaintiff Willard J. Luff and defendant Morris F. Luff, and that about 1944 plaintiff John W. Slacks became associated with said partnership. Further answering paragraph 4 of the complaint, these defendants allege that said John W. Slacks became associated with said partnership about April 1, 1944, advanced the sum of $500.00 to the firm, which amount was repaid to him in full within a few months thereafter from firm funds; that he was paid in full for all services rendered to the firm, if any, and that his association with the said firm was finally and definitely determined by his announced abandonment and repudiation of any obligation thereto on or about May 15, 1948, since which time he has not been a member of or connected with said partnership in any manner whatever. Except as admitted herein, all allegations of paragraph 4 of said complaint are denied.

5. The allegations of the first sentence of paragraph 5 of the complaint are admitted, except that these defendants aver that projects other than the winch project were contemplated to be handled by the firm. The allegations of the second sentence of said paragraph 5 are denied. The allegations that Willard J. Luff, a highly trained and experienced professional engineer performed

technical, engineering and supervisory services in connection with the winch production project undertaken by the partnership are admitted. The allegation that John W. Slacks contributed any knowledge, experience or services in industrial engineering work and as a certified public accountant, and designed, installed and supervised a system of material and production controls utilized on the project, or assisted plaintiff Willard J. Luff in any supervisory or managerial duties or rendered any services of any value or benefit to said partnership whatever are denied. The allegation that defendant Morris F. Luff performed only non-technical services in connection with the headquarters office of the firm in Washington, D. C., is denied.

Further answering said paragraph 5 of the complaint, these defendants allege that the services of said John W. Slacks to the firm were of no value or benefit to said partnership, and that in addition to services of a non-technical nature, defendant Morris F. Luff performed and rendered many and varied services of a professional and technical character for and on behalf of said firm which neither said Willard J. Luff nor John W. Slacks was capable of performing or qualified to perform.

6. The allegation of the first two sentences of paragraph 6 of the complaint are admitted. These defendants further admit the allegations of the third sentence of paragraph 6 that upon completion of the winch production project for which it was formed said partnership was dissolved, and aver that said dissolution was complete, final and absolute on and after about the first of October, 1949, as hereinafter more fully shown. The allegations of the last sentence of paragraph 6 of the complaint are admitted. These defendants aver that at the time of the dissolution of said partnership its claim against the United States had been denied and was of

no value whatever, and was known to have no value by the plaintiffs herein.

7. The allegations of paragraph 7 of the complaint are denied.

8. The allegations of paragraph 8 of the complaint that the three partners employed and retained R. Sidney Johnson, Esquire, as their attorney to represent them individually and as co-partners of said Willmore Engineering Company in the prosecution of a claim against the United States and undertook, promised and agreed to pay said attorney a contingent fee or any fee are denied. The allegations of said paragraph 8 that said attorney has continued to act for said partnership in all matters concerned with the prosecution of said claim and still is the attorney for said firm in any capacity whatever or for any purpose whatsoever are denied. These defendants further allege in answer to said paragraph 8 of the complaint that said attorney had no authority, right or privilege to represent or attempt to represent these defendants or either of them or the firm of Willmore Engineering Company in any capacity whatever in connection with the proceedings of the board of arbitrators under Private Laws Nos. 495 and 501, or in any other capacity or for any other purpose whatever.

9. These defendants admit that on or about December 5, 1949, a suit was filed in the United States Court of Claims in the name of Willmore Engineering Company, which was dismissed by said Court, but deny all other allegations of paragraph 9 of said complaint.

10. These defendants admit that a civil fraud proceeding was brought by the United States against the plaintiffs and the defendant Morris F. Luff, the same being Civil Action No. 1702-51, in the United States District Court for the District of Columbia, in which Honorable Ben Moore, as judge of said Court, directed a ver-

diet in favor of the defendants named therein, but deny each and every other allegation of paragraph 10 not specifically admitted herein.

11. These defendants admit that several bills, including H. R. 6053, were introduced in the Congress for the relief of Willmore Engineering Company, and that committee hearings were held thereon, but they deny each and every other allegation in paragraph 11 of the complaint herein.

12. These defendants admit that Representative Frank Small of Maryland introduced H. R. 7258 in the 83rd Congress for the relief of Willmore Engineering Company, which became Private Law No. 495, 83rd Congress, approved June 30, 1954, and that House Joint Resolution No. 553, approved July 6, 1954, was passed by Congress, amending Private Law No. 495 by adding section 2 thereto, but deny each and every other allegation set forth in paragraph 12 of the complaint.

Further answering said paragraph 12 of the complaint, these defendants allege that the enactment of said relief legislation was due solely to their efforts, work and expense, and not to the efforts, work or expense of the plaintiffs herein, or either of them.

13. The allegations of paragraph 13 of the complaint are admitted.

14. These defendants admit the making of the agreement of June 19, 1954, set forth in paragraph 14 of the complaint, but deny each and every other allegation therein contained not specifically admitted herein.

15. These defendants admit that on or about July 31, 1954, Eugene D. Hegarty, the arbitrator appointed by said agreement of June 19, 1954, held a meeting attended by these defendants, Cragin W. Donaldson, and plaintiff Willard J. Luff. They deny each and every other

allegation in said paragraph 15 contained and the whole thereof, and specifically deny any false, fraudulent or deceitful declarations, representations or statements on their part. Further answering said paragraph 15 of the complaint, these defendants allege that the statements and representations made by them to said Eugene D. Hegarty were true and accurate, and the said Eugene D. Hegarty, acting as an arbitrator of said parties, duly made valid reports and findings, as fully set forth in Civil Action No. 5139-54 in this Court, to which reference is hereby made with the request that all pertinent allegations and matters therein set forth, and particularly the reports and findings of said Eugene D. Hegarty as an arbitrator, as aforesaid, be read and considered as parts of this answer to the same extent as if set forth in full herein.

16. In answer to paragraph 16 of the complaint herein, these defendants deny that they or either of them had or have any false, fraudulent or deceitful intent or purpose whatsoever, and deny the right on the part of the plaintiffs or either of them to repudiate and rescind the said agreement of June 19, 1954, or any part thereof, for or by reason of any act, representation or statement of these defendants or at all, and aver that said agreement was and is binding upon the plaintiffs and these defendants and each of them. Except as impliedly admitted herein, the allegations of paragraph 16 are denied.

17. These defendants admit that on or about December 3, 1954, they filed in this Court Civil Action No. 5139-54, but they deny the remaining allegations of paragraph 17 of the complaint and the whole thereof, and aver the facts to be that there was no association with plaintiffs as liquidating partners from which these defendants could or did withdraw, and they further aver that all representations and statements made to the

members of the Board of arbitrators therein referred to were true and correct.

These defendants further allege that when their efforts were about to meet with success in procuring the enactment by Congress of legislation for the relief of Willmore Engineering Company, successor to the partnership formerly consisting of plaintiffs and defendant Morris F. Luff, the plaintiffs herein entered in to a fraudulent and unlawful, plan, conspiracy and combination between themselves and with others to take advantage of the work, efforts and expenses of these defendants in obtaining said relief legislation by falsely, fraudulently and unlawfully claiming, pretending and representing that said partnership had not been dissolved and terminated in 1949, but that it continued to exist as a "liquidating partnership", that said John W. Slacks had not become completely disconnected with said partnership in 1948, that said Willard J. Luff had not abandoned said partnership in 1949 and thereafter had no interest or rights therein, and that they, said Willard J. Luff and John W. Slacks, continued in said partnership and constituted a majority of the members thereof, which said representations and statements were false, known by said plaintiffs to be false, and were made with the intent and purpose of defrauding and cheating these defendants.

18. The allegations of paragraph 18 of the complaint are denied.

19. These defendants admit the pretended appointment of a board of arbitrators, as alleged in paragraph 19 of the complaint, but deny the validity of the proceedings and award of said board, for the reasons and on the grounds set forth in Civil Action No. 5139-54 in this Court, to which reference is hereby made with the request that all pertinent parts of the pleadings therein be read and considered in connection herewith to the same extent as if set forth in full herein.

Further answering paragraph 19 of the complaint, these defendants aver that the purported award made by said arbitrators was and is void, inadequate in amount, and unenforceable, upon the grounds and for the reasons set forth in the complaint filed in said Civil Action No. 5139-54.

20. The allegations of paragraph 20 of the complaint are denied.

21. The allegations of paragraph 21 of the complaint are denied.

22. These defendants admit that said board of arbitrators made a purported award in the amount stated in paragraph 22 of the complaint, but deny all other allegations of said paragraph of the complaint.

23. The allegations of paragraph 23 of the complaint are admitted.

24. The allegations of paragraph 24 of the complaint are admitted.

25. The allegations of paragraph 25 of the complaint are denied.

26. The allegations of paragraph 26 of the complaint are denied. Further answering said paragraph 26, these defendants aver that the indebtedness therein referred to is a personal debt owing to said accounting firm of McGinley and McGinley by these defendants.

27. The allegations of paragraph 27 of the complaint are denied.

28. The allegations of paragraph 28 of the complaint are denied.

29. These defendants admit that the Circuit Court for Anne Arundel County, Maryland, rendered a judgment on a promissory note in favor of the Merchants National

Bank, and aver that the same represents a personal obligation of these defendants and that they have paid a part of the original amount of the obligation upon which said judgment is based. Except as admitted herein, the allegations of paragraph 29 of the complaint are denied.

30. These defendants admit that said private laws provide that one-half of the arbitration expense thereunder shall be borne by the Willmore Engineering Company, but deny the remaining allegations of paragraph 30 of the complaint, and state that by reason of the fact that said award is invalid, no obligation exists thereunder.

31. The allegations of paragraph 31 of the complaint are denied. Further answering said paragraph 31, these defendants aver that allegations thereof clearly disclose the fraudulent and unlawful purpose, the intention and scheme of the plaintiffs herein to receive and obtain, if they can do so, the major portion of any amount payable for the relief of Willmore Engineering Company, and to deny to these defendants the fruits of their efforts, work and expenses.

32. The allegations of paragraph 32 of the complaint are denied.

33. The allegations of paragraph 33 of the complaint are denied. Further answering said paragraph 33 of the complaint, these defendants deny that plaintiffs have any lawful claims against them whatever, and aver that the allegations of said paragraph of the complaint were made maliciously for the purpose and with the intention of injuring these defendants and discrediting them, if possible, in the eyes of this Court.

Fifth Defense

These defendants aver that the partnership arrangement hereinbefore mentioned between plaintiffs and de-

fendant Morris F. Luff was oral and not in writing; that said partnership was one at will, from which any partner might withdraw at any time and thereby dissolve and terminate the same; and that by withdrawing and abandoning said partnership, as hereinbefore alleged, the plaintiffs dissolved and terminated said partnership and the same has not been resumed or revived, and that on or about October 1, 1949, said partnership agreement between said partners became and was and continued to be unenforceable by any one or more of said former partners against the others or any of them.

Sixth Defense

Said partnership agreement was within the statute of frauds, and was and is for that reason unenforceable by one or more of said former partners against any of the others.

WHEREFORE, having fully answered the complaint of the plaintiffs herein, these defendants pray that this action be dismissed, and that they recover of and from the plaintiffs their costs and disbursements herein.

MORRIS F. LUFF
RUTH K. LUFF
Defendants

RICHARD L. MERRICK,
1624 Eye St., N. W.,
Washington 6, D. C.,
Attorney for Defendants,
Morris F. Luff and
Ruth K. Luff.

DISTRICT OF COLUMBIA, ss:

Morris F. Luff, being first duly sworn according to law on oath deposes and says that he is one of the defendants named in the above entitled action; that he has read the foregoing Joint and Several Answer by him signed and knows the contents thereof, and that he verily believes the same to be true.

MORRIS F. LUFF

Subscribed and sworn to before me this 28th day of February, 1955.

/s/ MARIANNA D. WAGGMAN
Notary Public, D. C.

(SEAL)

[Filed April 20, 1955]

August 4, 1954

Mr. Eugene D. Hegarty,
121 Sipes Lane,
Annandale, Virginia.

Dear Mr. Hegarty:

Please be advised that the undersigned, R. Sidney Johnson and J. Richard Earle are the attorneys duly appointed and authorized to represent the past, present, and future interests of Messrs. Willard J. Luff and John W. Slacks, two of the three partners comprising the Willmore Engineering Company, in connection with the claim of said partners against the United States mentioned and referred to in Private Acts of Congress Nos. 495 and 501, 83rd Congress.

We are given to understand that on Saturday, July 31, 1954, in the office of Delos Smith, Esquire, you assumed to hold a meeting or hearing pursuant to the

terms of an alleged agreement, represented to have been signed by Willard J. Luff, Morris F. Luff, and Ruth K. Luff, dated June 19, 1954, at which you undertook to preside as arbitrator of the rights of these persons, as well as Mr. John W. Slacks, and their interests in the aforesaid claims of the said Willmore Engineering Company against the United States subject to arbitration under the aforesaid Acts of Congress.

We are further informed that those present at said meeting were yourself, Mr. Morris F. Luff, Mrs. Ruth K. Luff, Mr. Craigin Donaldson, and Mr. Willard J. Luff; that you proceeded informally to examine and question these persons, and thereupon announced your decision that the Willmore Engineering Company mentioned in said Acts of Congress is composed of two persons only, to wit, Morris F. Luff and Ruth K. Luff, his wife, and no other person. We are further advised that you announced at said meeting your intention to notify all interested parties, including arbitrators appointed pursuant to said Act of Congress, of your said decision.

Our information as above set forth was confirmed by you upon your visit to the office of R. Sidney Johnson, Union Trust Building, on Monday, August 2, 1954, although you then stated that the above decision was tentative only, and that you intended to secure legal advice before "formalizing" said decision.

You are informed and advised that any existing or purported partnership calling themselves "Willmore Engineering Company", other than the co-partnership mentioned and referred to in said Acts of Congress, has been organized or formed without the knowledge, consent, or approval of our said clients, and has no relationship, either in law or in fact, to the Willmore Engineering Company of which they are and have, in the past, been co-partners with Morris F. Luff, and can have no claim,

right or interest in the assets or claims of the partnership mentioned in said Acts of Congress. Any decision, judgment, or pronouncement by you, or anyone else, to the contrary is erroneous, unsupportable, and lacking of legal or factual significance or effect.

You are advised that our clients deny that on June 19, 1954, or on any other date, they became parties to any agreement, express or implied, between themselves or either of them, with the said Ruth K. Luff, and that if you have in your possession any paper writing or agreement so executed, the same is false.

You are further advised that our clients deny that the agreement in writing entered into between themselves and Morris Luff on June 19, 1954, to which you also were a signator, is valid or binding upon any of the alleged parties thereto, and aver that said agreement is void and of no effect whatsoever.

Our clients deny that there exists any authority on your part, individually, to make any valid determination in regard to the respective rights and interests of the partners, Willard J. Luff, Morris F. Luff, and John W. Slacks, in the aforesaid claim of said partnership against the United States, for the reason, among others that will be urged and presented in the event of a contest of the matter, that under said Acts of Congress the duty of making such determination and the jurisdiction to do so, was conferred exclusively upon the whole board of arbitrators provided by said Acts of Congress to be appointed and constituted, as a necessary basis for effecting a valid payment in accordance with said Acts of Congress, and the award of said arbitrators and that said duty and jurisdiction of the board of arbitrators cannot be invaded or lessened by any agreement of the parties either prior to or after the enactment of said acts of Congress.

Our clients further draw in question whether the attempted and purported appointment of Eugene D. Hegarty as one of the three arbitrators to be appointed pursuant to said Acts of Congress has any force, effect or validity, for the reason, among others that may hereafter be advanced if necessary, that said attempted and purported appointment occurred on June 19, 1954, and the Acts of Congress aforesaid did not become law until June 30th, and July 6th, 1954, and said attempted and purported appointment was not then made in pursuance of said Acts of Congress.

In consideration of the premises, you will please take notice that our clients will take such action as they may be advised for the protection and preservation of their respective interests in said Willmore Engineering Company, and the arbitration to be held pursuant thereto.

Trusting that you will give due and serious consideration to the matters hereinbefore mentioned.

Very truly yours,

R. Sidney Johnson
J. Richard Earle
Attorneys for
Willard J. Luff and
John W. Slacks

[Filed May 26, 1955]

AFFIDAVIT IN OPPOSITION TO MOTION OF PLAINTIFFS FOR PARTIAL SUMMARY JUDGMENT

DISTRICT OF COLUMBIA, ss:

Morris F. Luff, being first duly sworn according to law on oath deposes and states as follows:

1. He is one of the defendants named in this action and makes this affidavit in opposition to the motion of plaintiffs for a partial summary judgment herein.

2. In 1943 this affiant and Willard J. Luff began an informal business association called Willmore Engineering Company. Funds were supplied by affiant, and have never been repaid. John W. Slacks was associated with Willmore for a short time. He finally withdrew from the firm in 1948 and thereafter had no connection with or interest in the firm or any of its activities. About October, 1949, Willard J. Luff broke off all business relations with this affiant and finally determined and announced that he would not be responsible for any further action or liability of Willmore. He obtained full time employment in Pennsylvania.

3. From and after October, 1949, affiant and his partner, Ruth K. Luff, conducted the affairs of Willmore, particularly the effort to liquidate claims against the United States Government arising from Willmore's activities before and since 1949.

4. In 1952 this affiant had a certified public accountant audit the firms records for Congressional presentation and learned for the first time that Willard J. Luff, who kept the records and wrote checks up to 1949, had in that period withdrawn for his own use ten thousand dollars more of the firm's income than this affiant.

5. In March, 1954, when it appeared that Congress might enact a private law for the relief of this affiant and Ruth K. Luff, Willard J. Luff attempted to assert some interest in Willmore which he had abandoned in 1949.

6. The sponsors of the legislation insisted that, as a condition precedent to enactment of the legislation, an arbitrator be appointed to finally decide all questions and

contentions of present and former relationships to Willmore. This affiant proposed to Willard J. Luff that since the facts were so clearly established in a positively conclusive manner, Willard J. Luff might select the arbitrator himself, provided he, Willard J. Luff, would be bound by his decision. Accordingly, Willard J. Luff selected Eugene D. Hegarty, and on June 19, 1954, a formal document of agreement was solemnized by and between Ruth K. Luff, this affiant, and Willard J. Luff and Eugene D. Hegarty. A photostat copy is attached hereto. Mr. Hegarty announced his decision on July 31, 1954.

7. On November 13, 1954, there was a meeting, formally called by a purported board of arbitrators, attended by Ruth K. Luff, this affiant and their attorney Richard L. Merrick, Willard J. Luff, John W. Slacks, who in the meantime had signed a carbon copy of the June 19, 1954 arbitration agreement, Eugene D. Hegarty, and other purported arbitrators, government attorneys and one R. Sidney Johnson. The original document of the June 19, 1954, arbitration agreement was exhibited to all. The facts concerning its execution were explained in detail by Eugene D. Hegarty. No suggestion, notice or demand for recission or annulment was made. No fraud, deceit or misrepresentation was performed upon Mr. Hegarty, as charged in plaintiffs' complaint. Mr. Hegarty said that he had received at various times a number of letters from Mr. Johnson and Willard J. Luff, which were requests for his help in securing some recognition for the claims of Willard J. Luff.

8. This affiant saw the letter of August 4, 1954, a copy of which is attached to the joint affidavit of Mr. Johnson and Mr. Earle in support of the motion for partial summary judgment, for the first time when it was served with the motion mentioned above. No notice or demand for annulment of the June 19, 1954, agreement

has ever been received by this affiant or Ruth K. Luff, and no demand has ever been made on them or either of them for an accounting or settlement of the affairs of Willmore Engineering Company from either Willard J. Luff or John W. Slacks.

/s/ MORRIS F. LUFF

Subscribed and sworn to before me this 25th day of May, 1955.

/s/

(SEAL) Notary Public, D. C.

[Filed May 26, 1955]

Washington, D. C.
June 19, 1954

AGREEMENT

WE, THE UNDERSIGNED, for the purpose of finally resolving, settling, and liquidating all our rights, interests and obligations in the partnership known as WILLMORE ENGINEERING COMPANY of Washington, D. C., hereby mutually agree to arbitration, and we hereby irrevocably appoint, delegate, authorize and empower EUGENE D. HEGARTY of Annandale, Virginia, as our arbitrator to hear, investigate, and arbitrate a final determination for all and each of us in our names and places on all matters concerning our former and present relationships pertaining to WILLMORE ENGINEERING COMPANY, and as the arbitrator for WILLMORE ENGINEERING COMPANY on the Board of Arbitra-

tors to be created under a pending bill in Congress, H. R. 7258, in the event it is enacted and becomes law.

/s/ Morris F. Luff
/s/ Willard J. Luff
/s/ Ruth K. Luff

Appointment as Arbitrator under terms set forth in the agreement stated above is hereby accepted:
Eugene D. Hegarty

WITNESS:
Lawrence B. Slater

AFFIDAVIT OF LAWRENCE B. SLATER

LAWRENCE B. SLATER, being first duly sworn according to law, on oath deposes and states as follows:

In 1953 and 1954 I was administrative and legislative assistant to the Honorable Frank Small, Jr., Representative, Fifth District of Maryland, in the 83rd Congress, who sponsored legislation for the relief of Willmore Engineering Company. Acting with full knowledge and approval of the Honorable Frank Small, Jr., I was at all times charged with the responsibility of sponsoring and guiding this legislation, to insure that appropriate attention would be expedited through proper official channels.

We sponsored this legislation for the relief of Willmore Engineering Company because we were convinced that this Company's claim was worthy of official sponsorship, and it was apparent to us that all hope of further judicial review or relief had been exhausted through technical obstructions.

In December, 1953, this affiant and Morris F. Luff presented in person a proposal for settlement of this claim

to the Secretary of Commerce, through his General Counsel, an entirely new and fresh approach to the problem of securing redress for the harm done to Willmore Engineering Company. We proposed settlement through arbitration. The Secretary of Commerce agreed to support the proposal for arbitration and suggested that legislation be introduced to authorize and implement the procedure.

In January, 1954, this affiant drafted a new bill (H. R. 7258), sponsored by the Honorable Frank Small, Jr., approved by the Secretary of Commerce. We diligently attended to the work of seeking early consideration of H. R. 7258 by the new Subcommittee on Claims, House Committee on the Judiciary, 83rd Congress, with the full cooperation of Morris F. Luff. The bill was passed by the House of Representatives on March 16, 1954, and was sent to the Senate with a Committee Report which specifically stated—as follows—"The committee is of the opinion that resort to the voluminous record of hearings previously held in this case, confused as it is by the contentions of Maritime Commission witnesses founded upon misconceptions and misunderstandings, is impracticable and should be avoided. Inasmuch as a basis for adjustment of the claim has now for the first time been established, it remains only for Congress to provide a method of settlement that will be fair and equitable, both to the claimants and the United States."

A Subcommittee of the Committee on the Judiciary, United States Senate, considered the presentation of this affiant and Morris F. Luff and reported the bill to the full committee for action. The Honorable Frank Small, Jr., and this affiant personally appeared before the Senate Committee on the Judiciary in executive session for a complete formal inquiry, as a result of which the Senate passed H. R. 7258 with an amendment sponsored by the Senate Judiciary Committee providing that three

United States District Court Judges be appointed by the Chief Judge of the Court of Appeals as arbitrators. Chief Judge Harold M. Stephens and Chief Judge Bolitha J. Laws immediately entered objections and presented a request to the Judiciary Committees of the Senate and the House to provide some other method of appointing arbitrators. The Honorable Frank Small, Jr., and this affiant were requested to submit an amendment to a Conference Committee to provide the finally enacted method of appointing arbitrators and to make it clear that the arbitrators were to determine the amounts required to satisfy Willmore Engineering Company's claims for damages for the breach of its contract by the Government by inserting the words—"and the breach of it."

On June 17, 1954, Willard J. Luff appeared in our office and stated that his relationship to Willmore Engineering Company was then in controversy with Morris F. Luff. This affiant advised Willard J. Luff that, unless this controversy were settled and our office so advised, we would be disinclined to continue sponsorship of the bill and it would be allowed to die. This affiant further advised Willard J. Luff that, since arbitration was the method of settlement advocated in H. R. 7258, it would be consistent and appropriate to use arbitration to determine and settle any and all questions of personal relationships and entitlements in this case. This affiant also so informed Morris F. Luff, concerning this controversy. On the same date, this affiant informed Willard J. Luff that all the constructive effort of Willmore Engineering Company on this proposed legislation had been provided by Morris F. Luff, and that any further interference in the case by R. Sidney Johnson would serve only to obstruct and complicate enactment of the desired legislation.

On June 19, 1954, Willard J. Luff, Morris F. Luff, and Eugene D. Hegarty appeared at my office in the House

Office Building and asked me to witness an agreement naming Eugene D. Hegarty as arbitrator. Willard J. Luff informed this affiant that he had recommended Eugene D. Hegarty to serve as arbitrator to settle the issues between the former participants in Willmore Engineering Company, also to serve on the Board of Arbitrators to be created by enactment of H. R. 7258 into law. Morris F. Luff agreed to this selection of Eugene D. Hegarty as arbitrator. Eugene D. Hegarty agreed to serve in both capacities as arbitrator. At the request of Willard J. Luff and Morris F. Luff, this affiant assisted in preparing the agreement for signatures and witnessed the execution of their agreement.

Subsequently H. R. 7258 was enacted as Private Law 495 of the 83rd Congress, presaged by execution of the above agreement which was a condition precedent to further active sponsorship of this legislation.

Mr. Hegarty later informed me that, as arbitrator of the former and present relationships of the signatories to the agreement of June 19, 1954, he had held hearings and announced his decision orally on July 31, 1954, in the presence of Willard J. Luff, Morris F. Luff, Ruth Luff, and others. Mr. Hegarty's decision was based on his authority as an arbitrator, appointed by bona fide agreement signed in good faith in my presence and witnessed by my signature, subsequent attempts to repudiate the agreement notwithstanding.

LAWRENCE B. SLATER

Sworn and subscribed before me this sixth day of June, 1955.

NOTARY PUBLIC

/s/

My Commission Expires March 19, 1958.

[Filed Aug. 29, 1955]

ORDER GRANTING PARTIAL SUMMARY JUDGMENT FOR PLAINTIFFS

Upon consideration of the motion of plaintiffs for partial summary judgment and of the opposition thereto and of argument of counsel in open court, and upon examining the pleadings and evidence before it and interrogating counsel the court pursuant to Rule 56(d), Federal Rules of Civil Procedure, specifies that the following facts appear herein without substantial controversy:

(1) That Willard J. Luff, John W. Slacks and Morris F. Luff were members of a partnership known as Wilmore Engineering Company during the period April, 1944 to August, 1945;

(2) That during said period the partnership under a contract with the United States Maritime Commission produced winches for transport vessels for the United States, and that the United States is indebted to said partnership for services and expenses in connection with said contract;

(3) That Congress in order to satisfy the obligation of the United States to the Willmore Engineering Company enacted legislation providing for the appointment of a board of Arbitrators to determine the amount due said company for services and expenses in connection with its contract and the breach of it, if any, and for the payment of such sum by the Secretary of the Treasury to the Willmore Engineering Company;

(4) That a Board of Arbitrators was named pursuant to Private Law 495, 83rd Congress, 2nd Session, and said Board has certified an award to the Secretary of Treasury in favor of the Willmore Engineering Company in the amount of $375,577.37, and

(5) That the Secretary of the Treasury, pursuant to Private Law 501, 83rd Congress, 2nd Session, has paid out of the money in the Treasury the sum of $375,577.37 representing the award made by the Board of Arbitrators to compensate the Willmore Engineering Company, and that said sum, has with leave of this court, been deposited in the Registry of this court.

And it appearing to the court, pursuant to rule 54(b), Federal Rules of Civil Procedure, that there is no just reason for delay in determining who are the members of the Willmore Engineering Company for whose relief Private Laws No. 495 and 501, 83rd Congress, 2nd Session were enacted, the court concludes as a matter of law that Willard J. Luff, John W. Slacks and Morris F. Luff are said members of the Willmore Engineering Company, and it is, therefore, by the court this 29th day of August, 1955.

ORDERED That the motion of plaintiffs for partial summary judgment be and it hereby is granted, and that judgment be and it hereby is entered herein declaring that Willard J. Luff, John W. Slacks and Morris F. Luff are the members of the Willmore Engineering Company for whose relief Private Laws No. 495 and 501, 83rd Congress, 2nd Session were enacted.

/s/
Burnita Shelton Matthews
JUDGE

* * * *

FINDINGS OF THE ARBITRATOR

Aug. 18/54

In the Matter of Arbitration
between
Willard J. Luff, Morris F. Luff and
John W. Slacks in regard to their
respective participations in

WILLMORE ENGINEERING COMPANY

Background.

The Willmore Engineering Company has had pending a claim against the United States Government running back to 1943. This claim has been the subject of a Private Bill recently enacted. (P. L. 495 as amended by P. L. 501 —83rd Congress). Under the Private Bill enacted by the Congress the amount of the claim is made the subject of arbitration.

Willmore Engineering Company is a partnership; over the intervening years changes as to the relations of the partners have occurred. The original participants in Willmore Engineering Company agreed to submit the questions as between themselves to arbitration and to designate an arbitrator to serve on the Board of Arbitration called for by the Private Bill.

On June 19, 1954 in anticipation of the passage of the Private Bill, a meeting was held between Willard J. Luff and Morris F. Luff, the two original parties in Willmore Engineering Company. Willard J. Luff recommended that Eugene D. Hegarty be named as the arbitrator both to pass upon the issues as between the participants in Willmore Engineering Company and to serve on the Board of Arbitration to be set up in the event the Private Bill was enacted. Morris F. Luff agreed; and Willard J. Luff stated he would untertake to get approval of John W. Slacks, should that be advisable.

This Arbitrator was present at the meeting upon invitation of Willard J. Luff and agreed to serve as requested. An agreement was thereupon promptly drawn by the parties; a copy of the Agreement is attached hereto marked Appendix A. The Agreement was signed by Willard J. Luff and Morris F. Luff as participants in Willmore Engineering Company and by Eugene D. Hegarty accepting appointment as Arbitrator in the presence of witness Lawrence B. Slater, administrative assistant to Congressman Frank Small, Jr., who had originally introduced the Private Bill in the Congress. Subsequent to the meeting on June 19, 1954 Willard J. Luff contacted John W. Slacks, who signed the Agreement with one Charles J. Casper as Witness.

Oral instructions were given to this writer to begin his duties at once, setting forth the possible imminency of another Arbitration by reason of the Bill before the Congress.

This Arbitrator may have been chosen for a variety of reasons, but the principle motives of the appointing group clearly are as follows: The friendship existing between Willard and Morris Luff and this writer; the fact that this writer has had numerous conferences with each of them and with both of them over a period from early 1952 to this date; the fact that this writer is an engineer and therefore had many things in common with the above Willard and Morris Luff; the fact that this writer has had numerous conversations with them as it pertains to the Willmore Engineering Company, a partnership which they founded.

Pursuant to the appointment this writer discussed with both Willard and Morris Luff details of affairs of the Firm, and pursuant to such discussions obtained records of certain proceedings before the U. S. Court of Claims, the U. S. District Court, the Congress; all of such being

public records; and also certain other records identified as the McGinley Reports and the Willard Luff reports.

Pursuant to the above appointment this Arbitrator checked with the Department of Commerce and was advised that the Department had selected Delos Smith as its Arbitrator. This Arbitrator met with Arbitrator Smith and agreed upon Gerald Ryan, as the third Arbitrator. As of this date the Board of Arbitration has been assigned quarters in the Department of Commerce and the Board is familiarizing itself with the legislative history of the Private Bill under which it is constituted and stands ready to receive the claims of Willmore Engineering Company.

The Partnership of Willmore Engineering Company

The Private Bill pursuant to which the Board of Arbitration referred to above has been constituted was enacted only after prolonged and detailed hearings before the appropriate House Committee in which the records of Willmore Engineering Company were freely spread before the Committee. Testimony was given by Willard J. Luff and Morris F. Luff, and a special audit of the entire books of Willmore Engineering Company made by McGinley and McGinley, certified public accountants, made at the suggestion of the House Committee, was prepared and submitted to the Committee. With the aid of both Willard J. Luff and Morris F. Luff this Arbitrator became familiar with the records and evidence before the House Committee and with its report.

On July 31, 1954 this Arbitrator met with Willard J. Luff and Morris F. Luff to consider their relationships to Willmore Engineering Company. By registered letters dated August 7, 1954 to both Luffs and to John W. Slacks, this Arbitrator called upon each to submit any claims, data, records or evidence to support any claims as partners each may have in Willmore Engineering Company.

Since the Board of Arbitration, duly constituted under the Private Bill stands ready to proceed, it is important that all the facts be established concerning the participation of each of the partners in Willmore Engineering Company. However, the parties have shown a reluctance to agree fully on this aspect of the problem.

At the meeting on July 31, 1954 Willard J. Luff and Morris F. Luff orally stated their respective positions and reviewed matters which were largely reflected in the records before the House Committee and transcripts of civil fraud trial, to which this Arbitrator was referred by both parties. Also present were Ruth Luff, wife of Morris F. Luff and Mr. C. W. Donaldson, both of whom made statements, concerning the problems, statements which were uncontested by either Willard J. Luff or Morris F. Luff; however, such statements have been given no weight by this Arbitrator. The certified auditors' report on Willmore Engineering Company was furnished to this Arbitrator; otherwise this arbitrator has relied upon the company's records as disclosed in the records of the House Committee.

This Arbitrator has attempted to hear all parties as fully as the parties have evidenced a desire or willingness to be heard and this Arbitrator has investigated the former and present relationships of the parties to Willmore Engineering Company in order to arbitrate as between them pursuant to the terms of the Agreement of his appointment. This Arbitrator is satisfied, as a result, that he has adequate data before him to make a just and equitable award.

By reason of the study of the aforesaid records, and the personal and/or "judicial" knowledge of this writer the following conclusions and findings are:

It is herein established and therefore I find that the Willmore Engineering Company is a fictitious name used

by Willard and Morris Luff (brothers) and was adopted by them in 1943, at the time they entered into an informal Partnership or a Partnership at Will. There are no written evidences of the Firm agreement.

The Partnership was begun in 1943 during the War II period and it was to render certain engineering services. Certain capital contributions made by Morris Luff in 1943.

About April 1, 1944 one John Slacks associated himself with the brothers-partners and performed certain services for the Firm, and was paid for such services out of Firm funds. It is further established that Mr. Slacks advanced to the Firm $500, and this sum was repaid to him within a reasonable time, out of Firm monies. Mr. Slacks had associated himself with the firm with the consent of both brothers-partners. It is found that Mr. Slacks continued his association with the Firm to May 15, 1948.

It is clearly evident that Mr. Slacks was promised a Bonus or "Piece" of the business during the period 1944-1945. Through dates 1946 to February 1948 any evidences to that end are just as clearly lacking.

It is established that during the critical period for the Firm dated from 1946 through and to October 1 1949, funds for the contiuance of the enterprise were badly needed. Payments from the Government by reason of production of War II material had not been paid in full, and a difficult negotiation with the Government to effect such payments was in continuous progress.

It is clearly evident that the brothers-partners used their own funds and credit to maintain the position of the Firm. It is certain that Notes were signed, the proceeds of which were used by the Firm. It is certain that the signers of the notes were Willard and Morris Luff, and that John Slacks did NOT sign any notes for the Firm.

It is cleary evident that certain contracts were signed through that same period, the effect of which was to bind the Firm to pay over certain monies; and that the signers were Willard and Morris Luff, and NOT John Slacks.

It is known that one of the brothers-partners lost his home in a forclosure proceedings, the result of Firm indebtedness.

It is established that during the entire time of the association of Mr. Slacks with the Firm that he enjoyed sound financial status. And that he was President of the Leitz Camera Company of New York, and was active in its affairs during this same period.

It is just as clearly established that neither of the brothers called upon, or expected John Slacks to pay in any new monies, assume Firm debts, sign Firm notes and other obligations.

It is known that during the periods from 1949 to this time that Mr. Slacks did not participate in the supplications to the Congress for Relief from the wrongful withholding of payments by reason of Firm activity; and that the said supplications continued throughout three Sessions of the Congress, and that they were expensive in the matter of time and particularly money. It is established that during this same period, 1949 to this date, obligations were incurred and that John Slacks was in no manner a participant, nor became indebted either expressly or by implication, for the said debts and advances.

The costs of the McGinley reports, being a necessary instrument in proper presentation of the justifications to the Congress, were assumed by Morris F. Luff; and that Mr. Slacks was not therein obligated, or interested.

It is further found as a strong circumstance of interest, that although Morris Luff had advanced approximately $3700 in 1943 he has never withdrawn such advance, nor

has he demanded such repayment; and by contrast John Slacks after his advance of $500 in 1944, and after the said Morris Luff made a larger contribution, made demand for the return and was paid the said sum by the Firm. This notwithstanding the critical conditions of the Firm finances.

No criticism is herein intended, and such would be wholly improper, since the circumstances of the return of the Slacks fund were wholly upon a friendly basis and in good taste. It is eminently clear that both the brothers-partners hold Mr. Slacks in high regard and this fact is made a part of this Arbitration.

It is further found that as a circumstance that Mr. Slacks moved to Tucson, Arizona, and thereat has continuously conducted his own endeavors, and without any responsibility to the said Willmore Firm.

It is further found that during the term of his association with the Firm that he never, and in no instance was asked to or did request to, sign a Partnership Income Tax Return. There was no obligation upon him to do so, and he made no demand to do so.

This circumstance affects this Arbitrator very strongly, since Mr. Slacks was a trained auditor. He was a C. P. A. or its equivalent, and he was formerly employed by the Government in a high level capacity; to the end that he had superior business acumen and intelligence. Normal or common business affairs demand attention to the annual Income Tax Return, and this man could be no exception.

Certainly Mr. Slacks, so well versed in Administration, Corporate management, an auditor and man of substance would have submitted in writing a memorandum or at least a simple file evidencing his interest in a serious undertaking.

This Arbitrator therefor herein includes and FINDS that John Slacks had a special interest indeed in the Wilmore Firm, but not as a Partner; but rather as a Bonus associate. And this Finding is firmly based upon the fact that he did not enter into the association for "Better or for Worse" as a general partner must do; but rather chose to eliminate himself from the vagararies of partnership enterprise and the heartaches that attend it when adversity sets into the entity. It is reiterated that he was not bound to, and that this association with the Members was in good taste.

It is therefore concluded that Willard and Morris Luff were the sole Partners in the Willmore Engineering Company, and that they were general partners, for better or for worse in consequence of their original binding together in 1943.

What were the dates of their Membership?

From the inception of this informal Partnership at Will in 1943 to and until a date fixed as October 1, 1949 the Members state and the evidences are definitely clear that the brothers—partners were general partners.

About October 1, 1949 another major change in the oral arrangements between the Luffs in regard to Willmore Engineering Company took place. Willard J. Luff took employment out of Washington, the home of Willmore, and since October, 1949 he has been employed in Pennsylvania solely for his own, personal account. He withdrew from any active work of the partnership, prosecuting the claim against the Maritime Commission; he expressed grave doubt as to any success in establishing the claim; and he served notice on Morris F. Luff that he did not want to be personally liable for any additional expenses to be incurred by Willmore in the prosecution of the claims of Willmore including any rent for office space or any expenses in connection with the further prosecution of the

company's claims. He did, however, appear at his own expense as a witness for the company at hearings before the House Committee considering the Private Bill. And he also personally appointed R. Sidney Johnson as attorney to defend him in a suit charging civil fraud in the prosecution of the Willmore claim, a suit which resulted in a directed verdict for the Luffs who were defendants.

In the period since October, 1949 all activity of Willmore Engineering Company was carried on by Morris F. Luff. He aggressively prosecuted the company's claims. He was instrumental in having Private Bills introduced in three separate sessions of the Congress and he was largely responsible for the preparation of the case for the company. Willard J. Luff acquiesced in this activity by Morris F. Luff although unwilling personally to assist in carrying the financial burden of the company; and Willard J. Luff participated with Morris F. Luff to the extent of appearing as a witness before the House Committee Hearings for Willmore Engineering Company.

A formal meeting with the parties to the Arbitration Agreement was called by this Arbitrator on August 11, 1954 for the purpose of delivering to them a communication from the Board of Arbitration. At the meeting Morris F. Luff and Willard J. Luff appeared. Mr. Willard J. Luff appeared with R. Sidney Johnson and J. Richard Earle whom he identified as his counsel. Mr. Johnson and Mr. Earle stated they also appeared as attorneys for John W. Slacks but they refused to show any power of attorney or other evidence of authority to represent Mr. Slacks. Consequently the communication from the Board of Arbitration was not delivered at that time.

Morris F. Luff supplied to me properly authenticated data which I had previously requested of the purported partners orally and by registered letters dated 7 August 1954. Morris F. Luff made reasonable efforts to resolve all pending questions.

Willard J. Luff refused to supply any information then or to this date. He was accompanied by two lawyers who refused to discuss Willmore's affairs except on a hypothetical basis. I supplied a copy of my preliminary findings to both parties who have made no objection and have advanced no sound reason for their modification or revision. There now appears to be no dispute about the facts as I have stated them. Morris F. Luff has indicated in the meetings of July 31st and August 11th his desire to make generous provision for the services of Willard J. Luff rendered when he was an active partner. All such proposals have been summarily rejected by Willard J. Luff without comment.

I find clear and convincing evidence that Willard J. Luff in October, 1949 announced his withdrawal from all activity, responsibility, and liability for anything Morris F. Luff might thereafter do in connection with Willmore Engineering Company, and positively stated his belief in the futility of further efforts to collect the claim against the Government; that Willard J. Luff gave his then partner, Morris F. Luff no alternative but to continue the affairs of Willmore alone. The absence, silence and inaction of Willard J. Luff except to defend himself against the personal jeopardy of the civil fraud charges is proof that he himself had decided that this interest in Willmore had permanently lapsed.

Since the important matter of arbitrating the claims of Willmore Engineering Company against the U. S. Government must proceed without delay, these findings will be final, as the basis for an account stated, to be presented at an appropriate date if necessary.

Respectfully submitted,
Eugene D. Hegarty,
Arbitrator

* * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 320

MORRIS F. LUFF AND RUTH K. LUFF, *Petitioners,*

v.

WILLARD J. LUFF AND JOHN W. SLACKS, *Respondents.*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

NO CONSTITUTIONAL OR OTHER PROPER QUESTION FOR THIS COURT IS PRESENTED

Under the heading "QUESTIONS PRESENTED" petitioners endeavor to raise constitutional questions. Respondents submit that, in reality, there is no constitutional question properly before the Court, and that no special or important reason is shown, or exists, to justify granting certiorari.

The Seventh Amendment provides for trial by jury in "suits at common law". But this action is in equity and involves the winding up of the affairs of a partner-

ship, including the collection of the only remaining asset (the proceeds of the arbitration award), payment of the partnership's obligations, and distribution of the residue among the partners. Consequently, the Seventh Amendment is not applicable.

Petitioners purport to complain that the granting of the partial summary judgment without a trial in court was not due process of law under the Fifth and Fourteenth Amendments. The Fourteenth Amendment applies to actions of the several sovereign States of the Union. No such action is involved in this case, and the Fourteenth Amendment is therefore not applicable. As to the contention under the due process clause of the Fifth Amendment, the summary judgment was entered under Rule 56 of the Federal Rules of Civil Procedure, which have the force of law. All of the procedural requirements of the Rule were complied with by the parties and by the District Court; indeed, the petitioners do not contend otherwise. Therefore, no real constitutional question exists in the case.

Petitioners argue, in effect, that the District Court erred in not holding a trial in the courtroom prior to the entry of the summary judgment. The main purpose and design of Rule 56, however, is to avoid cumbersome and expensive trials in the courtroom in cases where the pleadings, depositions, admissions on file, and affidavits disclose that there is no *genuine* issue as to any *material* fact and the moving party is entitled to judgment as a matter of law. The private laws did not state the names of the partners constituting the Willmore Engineering Company whose claim against the Government was to be arbitrated, but the private laws did describe those partners as the ones who per-

formed services and incurred expenses in connection with the winch production job. The District Court had before it voluminous indisputable documents and evidence, which was *admitted* by petitioners, showing clearly that the three constituent partners were and are Willard J. Luff, John W. Slacks, and Morris F. Luff. The judgment so declared. Petitioners desire this Court to go over the entire record again and to come to a decision opposite to that of the ten judges who have carefully considered the whole case upon the complete record, briefs and argument. Accordingly, if certiorari should be granted it really would be for that purpose, whereas the judgment affects no one besides the parties. We think, therefore, that the petition falls far short of making a sufficient showing to justify the granting of certiorari, " * * * with due regard to the proper functioning of the limited reviewing power to which this Court is confined, decisively restricted through the creation of the intermediate Courts of Appeal and more largely confined by the Judiciary Act of 1925." See *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U. S. 70, 73-74, 75 S. Ct. 614, 616, 99 L. Ed. 897.

COUNTER-STATEMENT OF THE CASE

The petitioners have set out, under the heading "Statement of the Case", such alleged facts as they hope will influence the Court to believe that there may have been factual issues requiring a trial of the case. They attempt to support said allegations by an irrelevant and inadmissible document printed in the Appendix, hereinafter mentioned, and make no reference to those highly relevant and material portions of the record which justified the decision affirmed by the Court of Appeals. The argument is that the granting of

summary judgment was "arbitrary and capricious", and amounted to an abuse of summary judgment procedures. The respondents feel obliged to meet this contention, although they believe the Court may not reach the question, in view of the reasons hereinbefore assigned as grounds for denial of certiorari.

In order to present a proper legal and factual perspective of the case, supply important omissions, and correct inaccuracies appearing in the petition which are readily discernible by reference to the record, the respondents respectfully proceed with the following.*

The true ultimate facts in the case are stated in the judgment of the District Court, dated August 29, 1955 (J. App. 119, 120), and the decision of the Court of Appeals, dated May 17, 1956. (Rec. 167-169).

The Congress enacted Private Laws Nos. 495 and 501, 83rd Congress, 2d Session, for the relief of Willmore Engineering Company (J. App. 5, 6, 7) without naming the partners of said firm. The respondents were obliged to bring this action because of the claims and representations of the petitioner, Morris F. Luff, that he and his wife, the petitioner, Ruth K. Luff, are the partners of the Willmore Engineering Company entitled to receive the benefit of the award (J. App. 34-39) of the Board of Arbitrators appointed pursuant to said Private Laws.

On February 7, 1955, the respondents, Willard J. Luff and John W. Slacks, filed this action in the District Court under the provisions of Title 11, Section 306, of the District of Columbia Code (1951), and the Declaratory Judgment Act of 1948 (28 U. S. Code, Sections 2201 and 2202), naming Morris F. Luff and his

* References J. App. are to the pages of the Joint Appendix.

said wife, and George M. Humphrey, Secretary of the Treasury, as defendants. Ruth K. Luff had rendered herself an indispensable party because of the institution by her and her said husband of Civil Action No. 5139-54 in the District Court (J. App. 141) against two members of said Board of Arbitrators, in which she had asserted that she was a partner of Willmore Engineering Company.

The Complaint in this action (J. App. 1-17) set forth allegations to sustain prayers for relief by way of an injunction pendente lite restraining Morris F. Luff and Ruth K. Luff from any further efforts to secure for themselves payment of the award, and restraining the Secretary of the Treasury from making payment thereof to said defendants; that the Secretary of the Treasury pay the amount of the award into the Registry of the Court subject to further order of the Court; that the Court declare that the Willmore Engineering Company, mentioned in the said Private Laws is a partnership comprised of Willard J. Luff, John W. Slacks, and Morris F. Luff, and none other; and that the proceeds of the award be distributed in accordance with the prayers of the Complaint.

The Joint and Several Answer of the defendants Morris F. Luff and Ruth K. Luff (J. App. 47-54) admitted the essential facts upon which the respondents thereafter grounded their motion for partial summary judgment. Paragraphs 4, 5, and 17, and the paragraph denominated "Fifth Defense", admitted that Willard J. Luff, John W. Slacks and Morris F. Luff were the members of the partnership Willmore Engineering Company during the period April, 1944 to August, 1945, and performed the work of producing winches for vessels of the United States mentioned in the

Private Laws, during that period. Paragraph 9 of said Answer admitted the allegations of the petition filed by the said three partners in the United States Court of Claims on December 5, 1949, finally determined on November 6, 1951 (J. App. 79, 107-113), in which the activities of said partnership in connection with the winch production project are fully described. Paragraph 10 of the Answer admitted the civil fraud case brought against the same three partners by the United States in 1951, founded upon the assertion of claims of said three partners against the Government for services and expenses in connection with said winch production project, being Civil Action No. 1702-51 in the District Court (J. App. 129A-140), and also admits the allegations of the Answer and Counterclaim of said partners therein (J. App. 130-131) and of the Amended Answer and Counterclaim filed in said case (J. App. 132-140) wherein the performance by the said three partners of the winch production project is again set forth in detail. Civil Action No. 1702-51 ended in a directed verdict for the defendants on March 10, 1953 (J. App. 29-34). In the second paragraph of their answer in Civil Action 1702-51, which was adopted and realleged in the first paragraph of their Amended Answer and Counterclaim in said case (J. App. 132), said partners admitted the allegations of paragraph 2 of the Complaint of the United States (J. App. 129A) that the "defendants Willard J. Luff, Morris F. Luff, and John W. Slacks are, and at all times hereinafter mentioned, were partners doing business as Willmore Engineering Company * * * ". Paragraph 13 of the Answer in the case at bar admitted the allegations of paragraph 13 of the Complaint concerning Senate Report No. 1458 (J. App. 18-34) which was made a part of the Complaint herein. This document, which

formed the legislative basis for the enactment of the aforesaid Private Laws, in itself leaves no doubt as to the identity of the partners of Willmore Engineering Company intended to be relieved by Congress, as adjudged by the District Court.

Paragraph 6 of the Answer admitted the allegations of paragraph 6 of the Complaint that "*The duration of said partnership was confined and limited to the performance of said winch production project for the Maritime Commission, and upon the completion of that work, in or about August, 1945, it ceased to be active as a going concern. It had at no time engaged in any other business than that for which it had been formed, as aforesaid, and after August, 1945, no further business was planned or undertaken by said partnership. Upon the completion of said winch production project it became and was dissolved except for the limited purpose of liquidating its affairs and winding up its business. Its only asset was a claim against the United States for substantial sums of money unpaid, due and owing by the Maritime Commission to said partnership for its work for said Maritime Commission, as aforesaid.*"

Paragraph 14 of the Answer admitted the execution by the same three partners of the agreement of June 19, 1954, appointing Eugene D. Hegarty as the appointee of Willmore Engineering Company to the Board of Arbitrators, pursuant to said Private Laws (J. App. 8, 50).

On April 20, 1955, these respondents, as plaintiffs, filed a motion for a partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (J. App. 56), declaring that the Willmore Engineering Company for whose relief said Private

Laws were enacted, is a partnership composed of the plaintiffs, Willard J. Luff and John W. Slacks, and the defendant, Morris F. Luff. In support of their motion, the respondents, in addition to urging upon the Court the force of the admissions contained in the Answer, filed and presented to the Court, pursuant to Rule 56, duly authenticated documents and evidence as follows:

Senate Report No. 1458 (J. App. 21-26), above referred to, with the exhibits contained therein, which included the opinion of Judge Ben Moore granting a directed verdict in favor of the Willmore Engineering Company partners in Civil Action No. 1702-51 (J. App. 29-34); the administrative appeals which took place between November 19, 1947 and September 8, 1949, by the same three partners from denials of their claims for services and expenses in their performance of the winch production project for the Government (J. App. 115-118); the record of the United States Court of Claims in the suit instituted and prosecuted by said three partners in said court for the recovery of their said claims, which suit was pending between December 5, 1949 and November 6, 1951 (J. App. 79, 107-113); the agreement between Willmore Engineering Company and Haarmann Steel Company, dated May 17, 1944 (J. App. 58, 62-64), executed in the name of the firm by Willard J. Luff, Partner, M. F. Luff, Partner, and J. W. Slacks, Partner; the Complaint for an Accounting of Joint Venture and Appointment of Receiver, filed in Civil Action No. 28,597 in the United States District Court for the District of Columbia in April, 1945, signed "Willard J. Luff, Morris F. Luff, and John W. Slacks, doing business as Willmore Engineering Company, by Morris F. Luff", and

sworn to by Morris F. Luff (J. App. 38, 65); the affidavit of Morris F. Luff in Opposition to Motion to Quash, filed in said Civil Action No. 28,597 on September 18, 1945 (J. App. 58, 66-68); the Affidavit of Willard J. Luff (J. App. 57-62); and the affidavit of R. Sidney Johnson and J. Richard Earle (J. App. 68-70).

The aforementioned documentary evidence remained wholly uncontroverted by the petitioners, and established before the Court that Willard J. Luff, John W. Slacks, and Morris F. Luff were the partners of the Willmore Engineering Company who performed the services and incurred the expenses, the claim for which was authorized to be arbitrated by the provisions of the said Private Laws; that it was they who, from the commencement of the winch production project in 1943, until its completion in 1945, had earned the right to be compensated by the Government, and that it was they who, from the time of the dissolution of the firm in or about August, 1945, continuously until on June 19, 1954, when they jointly appointed Eugene D. Hegarty to the Board of Arbitrators, had diligently pursued their duties, as partners, to wind up the partnership affairs, and collect the claim against the Government—duties in which they are still engaged, despite the hostile and obstructive activities of the petitioner, Morris F. Luff.

The contentions of the petitioners in opposition to the motion for partial summary judgment is summarized by the Court of Appeals in its decision of May 17, 1956: "Morris F. Luff claimed and represented that Slacks ceased to be a partner about May 15, 1948, and that Willard J. Luff abandoned the partnership about October 1, 1949; that he and his wife

thereafter carried on all activity with respect to the partnership's claim against the Government and finally obtained the passage of the legislation for the relief of the Willmore Engineering Company; that he, Morris, and his wife are the sole remaining partners entitled to collect the money awarded by the arbitrators."

The writing described as "Findings of Arbitrator", printed in the Appendix to the petition (Petitioners App. 45A), is a completely discredited document, having no evidentiary value, and is shown by the petition itself (Petitioners' App. 32A-35A), and by the record (J. App. 9, 60, 68, 69, 70-78), to be wholly nugatory and inoperative, all power and authority of Mr. Hegarty to act as arbitrator between the three co-partners of Willmore Engineering Company having been revoked and rescinded by these respondents two weeks before the document was composed by him, without any submission having been made to him by the respondents.

The respondents' said motion for partial summary judgment was argued before the District Court on June 1, 1955, and was granted on August 29, 1955.

SUMMARY JUDGMENT WAS CORRECTLY ENTERED

The District Court, by granting the partial summary judgment, held that no genuine issue of any material fact had been raised by the contentions of the petitioners which entitled them to a trial, and this holding was entirely correct. The contentions of the petitioners that Slacks "withdrew" from the partnership in 1948, almost three years after its dissolution, and that Willard J. Luff "abandoned" the partnership in 1949, more than four years after dissolution, are wholly contradicted by the record, which shows that at the time they are alleged to have abandoned the firm, and

for years theretofore and thereafter, the respondents were actively and diligently engaged in their endeavors to collect the partnership's claim against the Government. There is no evidence in the case, and the petitioners have never contended, that either of the respondents ever relinquished, assigned, transferred, or in any manner released his interest in the sole asset of the partnership, consisting of its claim against the Government to the petitioners or anyone else. They had a vested interest in said assets. As a matter of law the petitioners could not have acquired that interest through any alleged "abandonment" thereof by the respondents. In the absence of a distinct and specific agreement to that effect the assets of a dissolved partnership would not become the property of any new or successor partnership. *Grafton* v. *Paine,* 7 App. D. C. 255.

It is the well settled rule of law that a partnership does not terminate upon dissolution, but continues, as between the partners, until its affairs are wound up, its assets collected and liquidated, its debts paid, and a settlement is completed between the partners.

Sutherland v. *Mayer,* 271 U. S. 272; 46 S. Ct. 538; 70 L. Ed. 943.
Zimmerman v. *Harding,* 227 U. S. 489; 33 S. Ct. 387; 57 L. Ed. 608.
Clay v. *Freeman,* 118 U. S. 97; 6 S. Ct. 964; 30 L. Ed. 104.
Karrick v. *Hannaman,* 168 U. S. 328, 336; 18 S. Ct. 135; 42 L. Ed. 484.
Pearce v. *Ham,* 113 U. S. 585; 5 S. Ct. 676; 28 L. Ed. 1067.
Ambler v. *Whipple,* 87 U. S. 546; 20 Wall. 546; 22 L. Ed. 403.
Pomeroy v. *Helvering,* 62 App. D.C. 364; 68 F. 2d 411.

Ickes v. *Gazzam*, 65 App. D.C. 346; 83 F. 2d 603.
Lamborn v. *United States* (Ct. Cl. 1946), 65 Fed. Supp. 569.
McClennen v. *Commissioner of Internal Rev.*, 1 Cir., 131 F. 2d 165; 144 A.L.R. 1127.
McKinley v. *Long* (1949), 88 N.E. 2d 382; 227 Ind. 637; 23 A.L.R. 2d 577.
Consaul v. *Cummings*, 222 U. S. 262; 32 S. Ct. 83; 56 L. Ed. 192.

Rule 56, F.R.C.P., is intended to eliminate trial in cases where there is no genuine issue of material fact, and such procedure does not infringe the constitutional right of a party to trial.

Fidelity & Deposit Co. of Maryland v. *United States*, 187 U. S. 315, 320; 23 S. Ct. 120.
Ex parte Peterson, 253 U. S. 300; 40 S. Ct. 543; 64 L. Ed. 919.
General Investment Co. v. *Interborough Rapid Transit Co.*, 253 N. Y. 133; 139 N. E. 216.

Even had this been an action at law, and the alleged facts tendered by the petitioners had been proven upon a trial, under all of the evidence shown by this record a directed verdict would have been justified. In such case summary judgment is proper. *Dewey* v. *Clark*, 86 U. S. App. D. C. 137; 180 F. 2d 766.

Where the regular course of judicial proceedings is followed, as in this case, the unsuccessful party is not deprived of due process of law, and this is so even though the decision of the court may be erroneous.

Arrowsmith v. *Harmoning*, 118 U. S. 194, 195; 6 S. Ct. 1023; 30 L. Ed. 243.
Iowa Central Ry. Co. v. *Iowa*, 160 U. S. 389, 393; 16 S. Ct. 344; 40 L. Ed. 467.
Tracy v. *Ginzberg*, 205 U. S. 170, 177; 20 S. Ct. 461; 51 L. Ed. 755.

Bonner v. *Gorman,* 213 U. S. 86; 29 S. Ct. 483; 53 L. Ed. 709.
McDonald v. *Oregon R.R. & Nav. Co.,* 233 U. S. 665, 669; 34 S. Ct. 772; 58 L. Ed. 1145.

The respondents submit that where the petitioners do not contend that the regular procedures were not followed pursuant to Rule 56, and the record contains such overwhelming evidence in support of the allegations of the Complaint in this case, and where no genuine issue of any material fact, as a matter of law, was raised by the petitioners in the District Court, the contention made in the petition that the District Court acted arbitrarily and capriciously is lacking of any merit whatsoever.

CONCLUSION

The petition for a writ of certiorari herein should be denied.

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